

**Iowa Department of Natural Resources  
Natural Resource Commission**

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**ITEM**

**13**

**DECISION**

**TOPIC**

Final Rule - Chapter 71, Nursery Stock Sale to the Public

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The Department requests Commission approval to amend Chapter 71, Nursery Stock Sale to the Public. The proposed amendments allow a previous year's purchaser to order less than 500 plants total with a minimum of 100 plants per species to complete a previous year's planting, allow commercial nurseries to purchase and resell State Forest Nursery Stock with the roots attached, and amend the prices of plants available for sale.

The Department accepted public comments through September 30, 2008. A total of 16 comments were received during the 25 day comment period. One comment was received after the official public comment period. Fourteen of the comments were generally supportive of the changes and one was opposed. The late comment did not comment on the rules changes but on the SFN in general.

The one person opposed to the rule change felt it created unfair competition with the private nursery sector and further socialized government. Two people commented that they would like to see SFN stock be available for farmstead windbreaks. Two people commented that they thought SFN stock should be available for any use. Three people commented that they would like to buy in smaller quantities. Two people noted that they did not think this rule was detrimental to private sector nurseries.

Two proposed changes in the Notice of Intended Action are not included as part of this proposed final and adopted rule. They include changes to subrules 71.2(3)"b" and 71.2(3)"c".

Paul Tauke, Forestry Bureau Chief  
Conservation and Recreation Division  
November 13, 2008

Attachments: Final Rule - Chapter 71, Nursery Stock Sale to the Public  
Summary of Public Comments

NATURAL RESOURCE COMMISSION [571]  
Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

The adopted amendments clarify which customers must meet the obligations enumerated in the rules, provide for the sale of additional plants, and amend the prices of plants made available for sale under these rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 2008, as ARC 7145B. Public comments were received until September 30, 2008. A total of 16 comments were received. Two proposed changes which were included in the Notice of Intended Action, one to paragraph 71.2(3)“b” and one to paragraph 71.2(3)“c,” have been eliminated and are no longer included as part of this rulemaking.

These rules are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

These amendments shall become effective January 21, 2009.

The following amendments are adopted.

**ITEM 1.** Amend 571—Chapter 71, title, as follows:

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**NURSERY STOCK SALE TO THE PUBLIC SALES**

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**ITEM 2.** Amend subrules 71.2(2) and 71.2(3) as follows:

71.2(2) Order limitations.

a. The minimum acceptable order shall be 500 plants in total with the minimum number of 100 plants of one species.

(1) To complete ~~the~~ a previous year’s planting, a purchaser may order less than 500 plants with a minimum of 100 plants of one species.

(2) No change.

b. No change.

c. Nursery stock shall be sold only for planting within the state of Iowa. Commercial nurseries, other state agencies within the state of Iowa, and federal agencies may purchase plants provided those plants are planted within the state of Iowa.

71.2(3) Customer obligation.

a. No change.

b. No change.

c. No change.

d. All ~~purchasers~~ private landowners who purchase stock shall, ~~be required~~ as a part of the plant order, be required to certify that the plants purchased will not be sold with roots attached.

e. All commercial nurseries, state agencies within the state of Iowa, and federal agencies shall be required to certify that the plants purchased will be planted within the state of Iowa.

**ITEM 3.** Amend subrule 71.3(1) as follows:

71.3(1) Prices for hardwoods shall be as follows:

a. ~~Oak,~~ Aspen, oak, hickory, walnut, pecan and basswood, 6” to 16” -- \$40 per hundred plants.

b. ~~Oak,~~ Aspen, oak, hickory, walnut, pecan and basswood, ~~17” and larger~~ 16” to 24” -- ~~\$45~~ \$50 per hundred plants.

c. Other hardwood tree species, 6” to 16” -- \$37 per hundred plants.

d. Other hardwood tree species, ~~17” and larger~~ 16” to 24” -- ~~\$42~~ \$47 per hundred plants.

e. Hardwood tree species, 24” to 48” -- \$100 per 100 plants.

f. Improved selections, 6” to 16” -- \$80 per 100 plants. For purposes of this rule, “improved selections” means plants that have been developed and bred by the department of natural

resources to perform superior to regularly cultivated plants in the following ways, by illustration and without limitation: faster growth, disease resistant or tolerant, and improved form.

g. Improved selections, 16" to 24" -- \$100 per 100 plants.

h. Improved selections, 24" to 48" -- \$150 per 100 plants.

**ITEM 4.** Amend subrule 71.3(2) as follows:

71.3(2) Prices for shrubs shall be as follows:

a. ~~Elderberry, buttonbush, dogwood, and Nanking cherry~~ Shrub species, 6" to 16" -- ~~\$37~~ \$40 per hundred plants.

b. ~~Elderberry, buttonbush, dogwood, and Nanking cherry~~ Shrub species, 17" 16" and larger -- ~~\$42~~ \$50 per hundred plants.

c. ~~Other shrub species, 6" to 16"~~ -- ~~\$40 per hundred plants.~~

d. ~~Other shrub species, 17" and larger~~ -- ~~\$45 per hundred plants.~~

**ITEM 5.** Amend paragraph 71.3(3)"b" as follows:

b. Conifers 17" 16" and larger -- ~~\$30~~ \$35 per hundred plants.

**ITEM 6.** Amend subrule 71.3(4) as follows:

71.3(4) Prices for wildlife packets shall be ~~\$90~~ \$100 each.

**ITEM 7.** Amend subrule 71.3(6) as follows:

71.3(6) Prices for walnut seed shall be \$3 per ~~pound~~ bushel.

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Date

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Richard A. Leopold, Director

NOIA - Chapter 71, Nursery Stock Sale to the Public  
Public Comments

9-15-08 (e-mail) Cindy Hildebrand, Ames – Supportive. She stated that the proposed rule changes seem reasonable.

9-16-08 (e-mail) William Bennett, Wadena – Supportive. The changes look fine to him.

9-16-08 (email) Don (no last name given) – Supportive. He would like nursery stock to be allowed for farmstead windbreaks to encourage energy conservation and benefit wildlife habitat, windbreak, shade tree and ornamental plantings.

9-17-08 (e-mail) Paul Gunzenhauser – Supportive. Wants SFN stock to continue to be available to the public.

9-17-08 (e-mail) Keith Hieber, Moorhead – Supportive. Wants to include sales for farmstead windbreaks.

9-17-08 (e-mail) David Bartemes, - Supportive. He would like to be able to order in smaller numbers.

9-17-08 (e-mail) Bill & Pat Victor, Villisca – Supportive. Wants everyone to be able to buy trees and plant them.

9-17-08 (e-mail) John Rempe, West Point – Supportive. Understands that farmstead windbreaks are excluded due to concerns over unfair competition with commercial nurseries. He also understands that SFN stock can be used for field windbreaks and shelterbelts.

9-17-08 (e-mail) Greg Hicklin – Supportive. He thinks it is a good change that could be made even better if less than 100 tree minimum was allowed.

9-17-08 (email) Ace Hendricks – Supportive. He had questions on the difference between farmstead windbreaks, shelterbelts and field windbreaks.

9-18-08 (e-mail) Thomas O'Connor, Iowa Natural Resources Conservation Service, Des Moines – Supportive. He wrote that the changes look good.

9-18-08 (e-mail) John Myers, State Resource Conservationist Iowa Natural Resources Conservation Service, Des Moines – Supportive. He wrote all changes are positive.

9-25-08 (phone) Mike Hamilton, Robins – Supportive. He was initially opposed; due to fears over the SFN competing with the private sector; however, once the rule changes were explained he became supportive of the changes.

9-25-08 (e-mail) Mike Bevins, State Horticulturist Iowa Division of Agriculture and Land Stewardship Des Moines - Supportive. Suggested that under 71.2(2)(1) that the language should reflect that a previous purchaser could purchase less than 500 seedling to complete a planting that was installed within the last three years.

9-29-08 (phone) Eileen Robb, Johnston - Supportive. Concerned that we do not do anything to make it more difficult for landowners to obtain and plant trees in small sizes and quantities. She also commented that she is afraid that private nurserymen will see this as detrimental to their business. She does not see it that way at all.

9-30-08 (e-mail) Kevin Kelly owner Kelly Tree Farm, Clarence - Not Supportive. He feels that the SFN is attempting to expand socialized government in Iowa and will eliminate private businesses that sell similar items. He wants the SFN to limit the number of species produced and limit production to 1.5 million seedlings.

10-13-08 (letter which came in after public comment period) Iowa Nursery Landscape Association Board of Directors) – Did not state if they supported or opposed the changes to the rule. They did say that they represent private industry and don't believe that government should compete with private business. They feel that the SFN should produce trees for use on state land and to only sell to private landowners when private nurseries run out of seedlings.

